

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0163**

*Modified*  
*No Overpayment or Penalties*

**PROCEDURAL HISTORY:** On November 29, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a combined \$15,050 overpayment of unemployment insurance benefits that claimant was required to repay to the Department, a \$4,515 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 193632). Claimant filed a timely request for hearing. On January 5, 2024, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on January 24, 2024 issued Order No. 24-UI-246418, modifying decision # 193632 by concluding that claimant was overpaid \$7,250 in regular unemployment insurance (regular UI) benefits and \$7,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that he was required to repay to the Department, but that he did not willfully make a misrepresentation or fail to report a material fact to obtain benefits and therefore was not liable for a monetary penalty or penalty disqualification.<sup>1</sup> On February 12, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's argument, written on the application for review, when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and therefore was not liable for a monetary penalty or

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<sup>1</sup> Although Order No. 24-UI-246418 stated that it affirmed decision # 193632, it modified that decision by concluding that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits and is not liable for a monetary penalty or penalty disqualification. Order No. 24-UI-246418 at 8.

penalty disqualification, is **adopted**. The rest of this decision addresses claimant's liability for the overpayment of benefits.

**FINDINGS OF FACT:** (1) On April 22, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's claim was monetarily valid, with a weekly benefit amount of \$290. Claimant intended to file a claim only for Pandemic Unemployment Assistance (PUA) benefits based on diminution in self-employment work as a real estate agent during the COVID-19 pandemic.

(2) Claimant claimed benefits for the weeks including April 26, 2020, through October 17, 2020 (weeks 18-20 through 42-20). These are the weeks at issue. Claimant was paid \$290 in regular UI benefits for each of these 25 weeks, totaling \$7,250; and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits each week for weeks 18-20 through 30-20, totaling \$7,800. Each of these payments was made on or before October 20, 2020.<sup>2</sup>

(3) During each of the weeks at issue, claimant earned \$999.17 by working full-time for RAI Trade Marketing Services. Claimant did not report these earnings to the Department because, when filing his initial claim, he understood from the Department's representative that he could receive benefits to compensate him for the loss in self-employment income despite continuing to work full-time for the employer, and that only self-employment income should be reported. The Department learned of claimant's wages through the employer's quarterly payroll reports. Had claimant reported his wages on his weekly claims, the Department would not have paid claimant benefits under any program, including PUA, for the weeks at issue.

(4) On November 29, 2023, the Department issued decision # 193632, which concluded, in part, that claimant was not entitled to the benefits he was paid for the weeks at issue because he was not unemployed during those weeks.

**CONCLUSIONS AND REASONS:** Claimant was overpaid \$7,250 in regular UI benefits and \$7,800 in FPUC benefits for the weeks at issue. However, the Department lacked authority to amend the original decisions allowing benefits for those weeks, and claimant is therefore not liable for those overpayments.

**Remuneration.** An individual is not eligible to receive unemployment insurance benefits if they are not unemployed. ORS 657.155(1)(e) ("An *unemployed individual* shall be eligible to receive benefits with respect to any week . . .") (emphasis added). Per ORS 657.100(1), an individual is deemed "unemployed":

in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount.

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<sup>2</sup> EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

Claimant's weekly benefit amount for the weeks at issue was \$290. The employer reported to the Department that claimant worked full-time and earned \$999.17 during each of the weeks at issue, and claimant agreed with this report. Transcript at 9, 16. Because claimant worked full-time and earned more than his weekly benefit amount, he was not "unemployed" and was not entitled to benefits during the weeks at issue. Claimant was therefore overpaid \$7,250 in regular UI benefits and \$7,800 in FPUC benefits for the weeks at issue.

**Authority to amend original decisions allowing benefits.** ORS 657.267 provides:

(1) ***An authorized representative shall promptly examine each claim*** for waiting week credit or for benefits ***and, on the basis of the facts available, make a decision to allow or deny the claim.*** Information furnished by the claimant, the employer or the employer's agents on forms provided by the Employment Department pursuant to the authorized representative's examination must be accompanied by a signed statement that such information is true and correct to the best of the individual's knowledge. ***Notice of the decision need not be given to the claimant if the claim is allowed*** but, if the claim is denied, written notice must be given to the claimant. If the claim is denied, the written notice must include a statement of the reasons for denial, and if the claim is denied under any provision of ORS 657.176, the notice must also set forth the specific material facts obtained from the employer and the employer's agents that are used by the authorized representative to support the reasons of the denial. The written notice must state the reasons for the decision.

(2) If the claim is denied under any provision of ORS 657.176, written notice of the decision must be given to the employing unit, or to the agent of the employing unit, that, in the opinion of the Director of the Employment Department, is most directly involved with the facts and circumstances relating to the disqualification.

(3) Notice of a decision that was wholly or partially based on information filed with the director in writing within 10 days after the notice provided for in ORS 657.265 must be given to any employing unit or agent of the employing unit that filed the information.

(4) ***If a decision to allow payment made pursuant to this section does not require notice, that decision may be amended by an authorized representative.*** The amendment must be made by written notice informing the recipient of the right of appeal pursuant to ORS 657.269. ***The amendment must be issued within one year of the original decision to allow payment, except in cases of alleged willful misrepresentation or fraud.*** A decision requiring notice, made pursuant to this section, may be amended unless it has become a final decision under ORS 657.269.

(Emphasis added.)

Order No. 24-UI-246418 concluded that claimant was overpaid a total of \$7,250 in regular UI benefits and \$7,800 in FPUC benefits for the weeks at issue that he was required to repay to the Department. Order No. 24-UI-246418 at 8. As discussed above, the record shows that claimant was not entitled to the benefits he was paid for the weeks at issue, and he was therefore overpaid. However, the Department was not authorized to amend the original decisions allowing payment of benefits for the weeks at issue more than a year later, and claimant therefore is not liable for the overpayments.

The Department made its original decisions under ORS 657.267(1) to allow payment of benefits for the weeks at issue by paying each weekly claim on or before October 20, 2020. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department has one year to amend the decisions allowing payment. Decision # 193632 amended those decisions allowing benefits to a decision denying benefits by concluding that claimant was not entitled to the benefits he had been paid. Because decision # 193632 was issued more than one year after the original decisions to allow payment for the weeks at issue, the Department was not authorized to issue it pursuant to ORS 657.267(4) in the absence of willful misrepresentation or fraud. While decision # 193632 *alleged* that the overpayment was the result of willful misrepresentation, Order No. 24-UI-246418, as adopted in part here, concluded that it was the result of claimant's error that did not constitute willful misrepresentation. No. 24-UI-246418 at 8. Accordingly, the overpayment was not the result of willful misrepresentation or fraud, and the one-year limitation on amendments applies.

Because the Department therefore lacked authority to amend the original decisions allowing payment of benefits for the weeks at issue with a decision assessing an overpayment for those weeks, claimant is not liable to repay the overpayment of \$7,250 in regular UI benefits and \$7,800 in FPUC benefits.

**DECISION:** Order No. 24-UI-246418 is modified, as outlined above.

S. Serres and A. Steger-Bentz;  
D. Hettle, not participating.

**DATE of Service:** March 15, 2024

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](https://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# Understanding Your Employment Appeals Board Decision

## English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

## Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

**Khmer**

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Laotian**

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**Arabic**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

**Farsi**

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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